plaintiff cannot recover. *In re Simonson's Estate* (Wis.), 160 N. W. 1040.

Ante nuptial contracts will not be allowed to vary the personal duties and obligations imposed on the parties by the marriage contract. *Hair* v. *Hair,* 10 Rich. (S. C.) 163. See *Marshak* v. *Marshak,* 115 Ark. 51, 170 S. W. 567, L. R. A. 1915E, 161. Public policy requires that society be protected, as far as possible, from the burden of supporting those of its members who are not ordinarily fitted to be wage earners but perform most important services for society. *Ryan* v. *Dockery,* 134 Wis. 431, 114 N. W. 820, 126 Am. St. Rep. 1025. Therefore, a husband cannot recover upon an ante nuptial contract by which his wife agrees to support him during their married life. *Ryan* v. *Dockery, supra.* As the duty of support is created by the marriage relation and is not dependent on the inadequacy of the wife's means of support, it is not changed by the fact that she is wealthy; nor do statutes enlarging the property rights and liabilities of a married woman effect the husband's duty in this respect. *Ott* v. *Hentall,* 70 N. H. 271, 40 Atl. 80, 51 L. R. A. 226. Obviously, marriage settlements which are intended primarily to insure the support of the wife and children are not included within this prohibition and are valid. See *Isaacs* v. *Isaacs,* 71 Neb. 537, 99 N. W. 268.

There is no rule of law, nor of public policy, which countenances any attempt on the part of the husband to shirk his legal duty of supporting his wife and children and impose that duty upon the wife. *Corcoran* v. *Corcoran,* 119 Ind. 138, 21 N. E. 468, 4 L. R. A. 782. A contract by which the wife agrees, for a valuable consideration, to release her husband from the duty of supporting her is void. *Silverman* v. *Silverman,* 140 Mass. 560, 5 N. E. 639. And, both on the ground of public policy and on the ground that such agreements would cause dissentions between the parties, their common law disability to contract with each other is not affected in this respect by the Married Women's Acts. See *Barnett* v. *Harshbarger,* 105 Ind. 410, 5 N. E. 718; *Corcoran* v. *Corcoran, supra.* An insolvent husband may, however, devote his time and energy to carrying on his wife's business without giving his creditors any rights to the profits of the business which were created by his labor. *Abbey* v. *Deyo,* 44 N. Y. 343. Where statutes have removed the common law disabilities of the parties to contract with each other, such contracts will be enforced, but only where they are supported by the clearest and most satisfactory equity. See *Corcoran* v. *Corcoran, supra;* LONG, DOMESTIC RELATIONS, § 155. Thus, a wife may hire her husband, giving him his board and clothing in return for the services he renders her. *Kutcher* v. *Williams,* 40 N. J. Eq. 436, 3 Atl. 357.

In the principal case the plaintiff sued for wages alleged to be due him on account of an ante nuptial contract, but the duty of support resulting from the marriage relation would seem to have abrogated that contract.

LANDLORD AND TENANT—CONTRACT TO REPAIR—COMMON STAIRWAY.—The owner of a building who occupied the ground floor leased the second

floor to the defendant. The lease contained a covenant that the lessee should keep the premises in the same repair as they were at the beginning of the term. A subtenant of the lessee, who was guilty of no negligence, injured the common stairway which was used both by the lessee and other tenants of the building. The lessor sued the lessee for a breach of the covenant to repair. *Held,* the defendant is not liable. *Tremont Theatre Amusement Co.* v. *Bruno* (Mass.), 114 N. E. 672.

When a building is rented to several tenants those things which must necessarily be used in common by all the tenants, such as stairways, roofs and elevators, remain in the possession and control of the landlord. *Sawyer* v. *McGillicuddy,* 81 Me. 318, 17 Atl. 124, 3 L. R. A. 458, 10 Am. St. Rep. 260; *Looney* v. *McLean,* 129 Mass. 33, 37 Am. Rep. 295; *Clarke* v. *Welsh,* 93 App. Div. 393, 87 N. Y. Supp. 697. A person who rents a portion of a building occupied by others has a right, in the nature of an easement appurtenant to the premises, to use such parts of it as may be necessary to enable him to enjoy the portion rented. *Miller* v. *Fitzgerald Dry Goods Co.,* 67 Neb. 270, 86 N. W. 1078

The general rule is that one who is entitled to the use of property as an easement must, in the absence of a covenant, keep it in repair. *Oney* v. *West Buena Vista Land Co.,* 104 Va. 580, 52 S. E. 343, 113 Am. St. Rep. 1066. And some courts apply the same rule where the parts of the building leased, such as common stairways, remain in the landlord's possession for the use of all the tenants of the building, who thus have an easement in them. See *Doupe* v. *Genin,* 45 N. Y. 119, 6 Am. Rep. 47; *Purcell* v. *English,* 86 Ind. 34, 44 Am. Rep. 255. Where the goods of one of the tenants were injured on account of the roof being leaky, he was held to have accepted the risk of such an injury and, therefore, the landlord was not liable. *Krueger* v. *Ferrant,* 29 Minn. 385, 43 Am. Rep. 223. So where the tenant was injured on account of defects existing at the time the lease was made. *Quinn* v. *Perham,* 151 Mass. 162. But, according to what is believed to be the better view, a distinction is drawn between cases of ordinary easements and those in which the easement is common to all tenants; and, in the latter case, since the part of the building in which the easement is claimed remains in the possession of the landlord, he is required, in the absence of any covenant, to make the necessary repairs. *Koskoff* v. *Goldman,* 86 Conn. 415, 85 Atl. 588; *Looney* v. *McLean, supra.* But if the use were not contemplated in the lease, and the tenants are therefore mere licensees, the landlord owes them no duty to repair. *Mayer* v. *Laux,* 18 Misc. 671, 43 N. Y. Supp. 743.

Where there is a covenant in the lease that the lessee shall keep the premises in repair, common stairways and the like are not included in it; because they are not included in the demised premises. *Levine* v. *Baldwin,* 87 App. Div. 150, 84 N. Y. Supp. 92; *Shipley* v. *Fifty Associates,* 101 Mass. 251, 3 Am. Rep. 346; *Bissell* v. *Lloyd,* 100 Ill. 214. There appears to be no authority as to the extent to which the landlord is required, by his express or implied covenant, to repair the premises; but it is certainly his duty to keep the property in such repair as to injure neither the tenant nor his property. *Bissell* v. *Lloyd, supra;*

Clarke v. *Welsh, supra.* The accumulation of ice and snow on the stairway, however, is such a temporary defect that the stairway is not considered out of repair on that account. *Purcell* v. *English, supra.*

MUNICIPAL CORPORATIONS—DEFECT IN STREETS—USE OF STREETS FOR TESTING AUTOMOBILES.—The plaintiff, while using the street for ordinary purposes, was injured by an automobile which the city authorities knowingly allowed to be run through the streets at a very rapid rate of speed in a test. The plaintiff brought an action against the city for damages occasioned by the injury. *Held,* the plaintiff can recover. *Burnett* v. *City of Greenville* (S. C.), 91 S. E. 203.

In some jurisdictions, in the absence of statute, it has been held that the duties of a municipal corporation in respect to its streets are governmental and legislative, and no implied liability exists in favor of one who receives injuries as a result of its failure to perform these duties. *Collier* v. *City of Fort Smith,* 73 Ark. 447, 84 S. W. 480, 68 L. R. A. 237; *McCutcheon* v. *Common Council of Homer,* 43 Mich. 483, 5 N. W. 668, 38 Am. Rep. 212. But the generally accepted doctrine of the American courts—even in the absence of statute expressly declaring the liability—is that where a municipal corporation proper is invested with the exclusive authority and control over the streets within its limits it owes the public the duty to exercise ordinary care to keep them reasonably safe for the usual mode of travel, and is liable for special injuries resulting from a neglect of such duty. *McCoull* v. *Manchester,* 85 Va. 579, 8 S. E. 379, 2 L. R. A. 691; *Albrittin* v. *Huntsville,* 60 Ala. 486, 31 Am. Rep. 46; 4 DILLION, MUN. CORP., 5 ed., § 1708; LILE, NOTES MUN. CORP., 3 ed., 55.

However, if the question does not concern the physical condition of the streets, but rather the use being made of them, entirely different principles are applicable. It is very generally held that a city's duties in respect to the use to be made of its streets are purely governmental and legislative, and there is no liability on the part of the city when the streets are used improperly. Thus, a city is not liable in damages for a failure to enact ordinances prohibiting an improper use of its streets. *Jones* v. *Williamsburg,* 97 Va. 722, 34 S. E. 883, 47 L. R. A. 294; *Kelley* v. *Milwaukee,* 18 Wis. 83. Nor is a city liable for a failure to enforce ordinances prohibiting the streets to be used improperly. *Goodwin* v. *Reidsville,* 160 N. C. 411, 76 S. E. 232, 42 L. R. A. (N. S.) 862; *Dudley* v. *Flemingsburg,* 115 Ky. 5, 72 S. W. 327, 60 L. R. A. 575, 103 Am. St. Rep. 253, 1 Ann. Cas. 958. But the contrary is held in some jurisdictions. *Hagerstown* v. *Klotz,* 93 Md. 437, 49 Atl. 836, 54 L. R. A. 940, 86 Am. St. Rep. 437.

Where the city, through its proper officers or agents, allows any improper use to be made of the streets it is not liable in damages to one who is injured as a result of such improper use. *McCarthy* v. *Munising,* 136 Mich. 622, 99 N. W. 865; *Toomey* v. *City of Albany,* 60 Hun. 580, 14 N. Y. Supp. 572; *Wilmington* v. *Vandegriff,* 1 Marv. (Del.) 5, 29 Atl. 1047, 25 L. R. A. 538, 65 Am. St. Rep. 256. Nor is a city liable where an ordinance which prohibits an improper use of the